

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
January 24, 2017

County of Kaua'i  
PLANNING DEPT.

17 FEB -3 P1:42

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Keawe at 9:03 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Kimo Keawe  
Mr. Roy Ho  
Mr. Wayne Katayama  
Ms. Kanoe Ahuna  
Ms. Donna Apisa

Absent and Excused:  
Ms. Glenda Nogami Streufert  
Mr. Sean Mahoney

The following staff members were present: Planning Department – Michael Dahilig, Kaaina Hull, Alex Wong, Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Administrator Jay Furfaro, Commission Support Clerk Lani Agoot

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Keawe called the meeting to order at 9:03 a.m.

**ROLL CALL**

Planning Director Michael Dahilig: Commissioner Katayama.

Mr. Katayama: Here.

Mr. Dahilig: Vice Chair Ho.

Mr. Ho: Here.

Mr. Dahilig: Commissioner Ahuna.

Ms. Ahuna: Here.

Mr. Dahilig: Commissioner Apisa.

Ms. Apisa: Here.

Mr. Dahilig: Commissioner Mahoney. Commissioner Streufert. Chair Keawe.

Chair Keawe: Here.

Mr. Dahilig: Mr. Chair you have five members present this morning.

### **APPOINTMENT OF SUBDIVISION COMMITTEE MEMBER(S)**

Chair Keawe: At the last meeting we appointed Roy Ho as Chair and Sean Mahoney as Vice Chair and I would like to add to that committee Commissioner Donna Apisa. I will entertain a motion to that effect.

Mr. Ho: Motion to approve.

Mr. Katayama: Second.

Chair Keawe: It's been moved and seconded to add Commissioner Donna Apisa to the Subdivision Committee, all those in favor. (Unanimous voice vote) Opposed? Motion carried 5:0.

I would like to add that we welcome Commissioner Apisa and her wealth of experience and expertise to this Commission, welcome.

Mr. Dahilig: The department would like to echo those same sentiments as well, welcome aboard and thank you for your service.

### **APPROVAL OF THE AGENDA**

Mr. Dahilig: We are now on item D, approval of the agenda. The department would recommend moving item I.1 to the end of this morning's agenda and adjourn immediately after, otherwise Mr. Chair we have no other suggested changes to the Commission's agenda.

Chair Keawe: Can I have a motion to approve the adjusted agenda?

Ms. Ahuna: Motion to approve the adjusted agenda.

Ms. Apisa: Second.

Chair Keawe: Commissioner Apisa, all those in favor. (Unanimous voice vote) Opposed? Motion carried 5:0.

### **MINUTES of the meeting(s) of the Planning Commission (NONE)**

### **RECEIPT OF ITEMS FOR THE RECORD**

Mr. Dahilig: We are circulating Supplement No. 1 to item G.2 (a), Mauna Loa Helicopter Tours, LLC. This is a revised site plan to be used as exhibit 1 as part of the Commission's evidentiary review this morning. The department would recommend receiving this item for the record.

Mr. Katayama: Move to receive.

Chair Keawe: It's been moved by Commissioner Katayama to receive, a second?

Mr. Ho: Second.

Chair Keawe: By Mr. Ho, all those in favor. (Unanimous voice vote) Motion carried 5:0.

## **HEARINGS AND PUBLIC COMMENT**

### **Continued Agency Hearing**

Special Permit SP-2016-4 to operate a transient vacation rental in Kilauea, located on Kauapea Road, approx.. 1,300 ft. from the Kauapea Road and Kilauea Road intersection, identified as Tax Map Key: 5-2-004:064, and affecting a portion of 7.418 acres = *Lee Unkrich and Laura Century Family Trust*. [Director's Report, Recommended Findings of Fact, Conclusions of Law, and Decision and Order received; hearing deferred 6/28/16, deferred 9/27/16.]

Mr. Dahilig: The matter is before the Commission because this was actually set at the previous meeting but we have been in contact with the attorneys concerning a petition for intervention that was filed as part of this application. That, we understand, is still in the works for negotiation as the intervenor would like to propose alternative facts to that application. The department will make a recommendation to actually defer this item to the first meeting in April but would suggest we hear from both parties or all the parties in this matter concerning the petition as well as the interveners whether a deferral to the first meeting in April would be acceptable to the Commission.

Chair Keawe: Do we have the parties present?

Deputy County Attorney Mark Bradbury: Deputy County Counsel Mark Bradbury on behalf of the Planning Department.

Mr. Dan Hempey: Dan Hempey on behalf of the Unkrichs.

Ms. Laurel Loo: Good morning, Laurel Loo on behalf of Fred Nissiri who is one of the interveners in this.

Mr. Hempey: Chair with your permission, we reached an agreement yesterday with the proposed interveners. As you know this was set for a hearing on whether they can intervene. We reached an agreement with them pending the Commission's approval that we would mediate on March

24, 2017 and see if we can resolve it so we have finally come to a date. We would ask to simply continue this until as you said April and I would also note as a reminder we already closed public testimony on this matter.

Chair Keawe: Mr. Bradbury.

Mr. Bradbury: No objection from the Planning Department.

Chair Keawe: Any questions from the Commissioners?

Mr. Dahilig: Mr. Chair if I could just clarify with the Deputy Director since he is handling this matter whether the proposal is in line with any of our timelines.

Deputy Director Kaaina Hull: It is within the timelines. We may want to request that the applicant continue to waive the timeline requirements for the Special Permit should it get deferred longer but aside from that the Commission is in receipt of our Findings of Fact and Conclusions of Law. They are just facts, no alternative facts here so we stand by the report.

Chair Keawe: Mr. Hempey, are you willing to waive the time limit?

Mr. Hempey: That is the first time I have heard that.

Mr. Hull: For clarification Mr. Hempey the timeline requirement for an application for a Special Permit is 210 days.

Mr. Hempey: So it was granted already?

Mr. Hull: No I believe it was waived previously at the September meeting or the June meeting and we request that you continue to waive the 210 day timeline.

Mr. Hempey: I will certainly be willing to waive from today to the next hearing date.

Chair Keawe: Mr. Bradbury any objection?

Mr. Bradbury: No objection.

Chair Keawe: Questions from the Commission? If not I will entertain a motion to defer.

Mr. Dahilig: I would suggest that it be the first meeting in April for the deferral.

Ms. Apisa: Motion to defer.

Chair Keawe: To the first meeting in April, do I have a second?

Mr. Katayama: Second.

Chair Keawe: By Mr. Katayama, all those in favor. (Unanimous voice vote) Opposed? Motion carried 5:0.

### New Agency Hearing

Class IV Zoning Permit Z-2017-2 and Use Permit U-2017-2 to allow construction of a new administration building, hanger, parking area, and associated improvements on a parcel located along the mauka side of Ahukini Road, in Lihue, situated at the Lihue Heliport facility and approx.. ¼ mile east of the Kapule Highway/Ahukini Road intersections, further identified as Tax Map Key: (4)3-5-001:148 and affecting a portion of a larger parcel containing 3.67 acres =Mauna Loa Helicopter Tours, LLC. [Director's Report received 1/10/17.]

Supplemental No. 1 Director's Report pertaining to this matter.

Mr. Dahilig: Supplemental No. 1 was distributed this morning as part of exhibit 1 to the applicant's submittal. The department would recommend opening the agency hearing at this time on this matter.

Chair Keawe: We will call the agency hearing open.

Mr. Dahilig: Mr. Chair there is nobody signed up to testify on this particular agency hearing. The department would recommend making a call for any last testimony on this particular item.

Chair Keawe: Anybody in the audience that wished to testify on this particular item?

Mr. Dahilig: Seeing none Mr. Chair the department would recommend closing the agency hearing on this matter.

Chair Keawe: I will entertain a motion to close the hearing.

Ms. Apisa: So moved.

Chair Keawe: Any second?

Mr. Ho: Second.

Chair Keawe: By Mr. Ho, all those in favor. (Unanimous voice vote) Opposed? Motion carried 5:0. Hearing is closed.

Class IV Zoning Permit Z-2016-18 and Use Permit U-2016-15 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the northern side of Poipu Road, approx.. 250 ft. north of the Kipuka Street/Poipu Road intersection and further identified 2375 Kipuka Street, Tax Map Key 2-8-023:040, and containing a total area of 10,570 sq. ft. = Rebecca Smith-Magdaleno. [Director's Report received 7/12/16, hearing postponed 7/26/16 due to applicant's failure to meet the requirements of Section 8-3.1(f) of the Kauai County Code, 1987, as amended.]

Mr. Dahilig: Mr. Chair before proceeding with this agency hearing the department still has not received the applicant's affidavit meeting the requirements of section 8-3.1(f), this is the second time they have not met this and we are not able to move forward with this particular hearing again on this item. Given the failure to submit as part of the application the affidavit meeting the notification requirements we are going to, after this meeting, be returning this application because they have not met the requirements of the full submittal. However they are still on the agenda for Chapter 92 Sunshine Law testimony. The department would recommend making a call for any Sunshine Law testimony on this item.

Chair Keawe: On this particular item is there anyone here to testify?

Deputy County Attorney Jodi Higuchi Sayegusa: I am open to alternative facts on this but is it twice or three times?

Mr. Dahilig: This is the third time. Mr. Chair we recommend that this matter be...is there an official action we need to do on this?

Ms. Higuchi Sayegusa: Because the notice requirements have not been met, at this point I don't think we would move into an agency hearing.

Mr. Dahilig: So I guess no action from the Commission.

#### **Continued Public Hearing** (NONE)

#### **New Public Hearing**

Zoning Amendment ZA-2017-2: Petition to amend Ordinance No. 436, relating to Section 8-17.2 of the Kauai County Code (1987) as amended, requesting a revision to the Visitor Destination Area boundary in Poipu; involving a project located along the Makai side of Pe'e Road in Poipu and immediately adjacent to The Point at Poipu resort facility, further identified as Tax Map Keys: (4)2-8-021:041, 044 through 068, and containing a total area of 13.078 acres = ***CIRI Land Development Company.***

Director's Report pertaining to this matter.

Mr. Dahilig: Mr. Chair this is a public hearing where the Commission sits as a policy body and the department would recommend opening the public hearing at this time.

Chair Keawe: We will go ahead and open the public hearing for this particular item, CIRI Land Development Company.

Mr. Dahilig: Mr. Chair we do have one individual signed up to testify on this particular item, Kanani Fu, the Housing Director.

Chair Keawe: Ms. Fu.

Ms. Kanani Fu: Good morning Planning Commissioners, Kanani Fu, Director of Housing County of Kauai. With regards to application ZA-2017-2 the Housing Agency would like to make a recommendation to the Planning Commission for consideration that Ordinance 860, which is the Workforce Affordable Housing Ordinance, applies to this application. Therefore the applicant should work out with the Housing Agency a Workforce Housing Agreement prior to final approval of this zoning amendment as one of the conditions.

Chair Keawe: Any questions for Ms. Fu?

Mr. Ho: Is this amendment negotiable Kanani, with the CIRI Corporation?

Ms. Fu: The Workforce Housing Agreement negotiable? It potentially could be but the ordinance has guidelines and requirements that would need to be met based upon the project density as well as what is being asked for in the zoning amendment.

Mr. Dahilig: Mr. Chair, if for the record, I understand the statement from the Housing Director. If she could articulate the trigger for applicability because there are no formal comments on the record at this point so because she is delivering them orally we should probably get them.

Chair Keawe: Ms. Fu, could you go over this particular section 860 and why you feel this is something that needs to be done.

Ms. Fu: The Housing Agency, on January 3<sup>rd</sup>, submitted comments on the applicability of the ordinance. In this particular case, when a zoning amendment is asked for in an area with the project density more than ten, ten or more, the ordinance applies. With this particular parcel that is up for consideration the density on the parcel allows for ten or more units.

Ms. Ahuna: Can you clarify how many the developers are proposing in reference to this?

Ms. Fu: Based on the application that I reviewed it is for ten until someone comes up or hands, in writing, an amendment to the application we are going based off of the ten that was submitted in the application.

Mr. Dahilig: I think that is where the initial comments that came in on the 3<sup>rd</sup> were for items that related to the boundary being around ten units however there was a subsequent amendment to the application that was transmitted to the Housing Agency to say in terms of we need you to clarify the comments that there is a boundary drawn around nine units. And so that is where I believe having her determination on applicability on the record needs to be clear because what is in front of the Commission is based off of Class III, SMA, and subdivision permits that have already been issued by this Commission. The parcel is only entitled for ten, single family units but the boundary for SMA is being drawn around nine. I do want to mention to the Commission that if this an issue that does need to be sorted out by the County Attorney the department would have no hesitation recommending a deferral of the item two weeks to move to the next meeting. However I think it does provide a novel question of law with how the Commission would forward applying a condition related to this item. So this matter has already been briefed with

the County Attorney's office and I think just so everybody is on the same page it would be better that everybody hear from the Housing Director the rationale why section 7(a)-3.1(a) is applicable at this particular circumstance.

Ms. Ahuna: Director Dahilig, to clarify, they have already been approved for the nine, correct, and so if the Commission was to do a condition on the ten that could be something that could be questionable on the other side.

Mr. Dahilig: It comes to an interpretation of what the phrase, and you can brief the Commission on this in the interim, there is a phrase that says "overall project density." And what that means in the context of a singular application before the Planning Commission or verses the bigger picture I think is issue of interpretation that is before the Housing Agency, my agency, as well as the County Attorney's office. What we do know is the permit history has approved ten and they are approved to construct ten single family residential units. That is already a vested right at this point. They are asking for additional entitlements for nine of those ten units and whether you view the ten units as applicable to this particular application or you look within the bright line boundary of the application as being only nine now that they have amended. There is that issue of interpretation whether overall project density means that you look at the past permit history or you don't. That is the area of concern that we are trying to resolve.

Ms. Ahuna: I would like to have a discussion to maybe defer it for the two weeks so we can get more clarification on this.

Mr. Dahilig: Our recommendation would be to proceed with the presentation of the overall application to get everything on the floor. Given this latest information from the Housing Agency this morning it may change the calculus with respect to whether the department either is going to recommend by discretion or recommend based on its obligation under the law and we don't have clarity on that at this time.

Chair Keawe: Commissioner Katayama.

Mr. Katayama: This is for the Director. Historically how has the department viewed these projects?

Mr. Dahilig: When we look at an application, especially for a district boundary amendment or a boundary amendment, we look at what is within the lines. That is their land right to ask for a change to their parcel. So whether a parcel is fully zoned or split zoned it is up to the applicant or the land rights holder to make adjustments to the entitlements to their property. So when we do an evaluation of what is in and what is out we look strictly at the zoning lines and we have to do an interpretation that way. For example we do a subdivision on a two thousand acre lot but we only carve out five acres. Theoretically this particular application could apply if you review the phrase overall project density broadly. So for instance applications like the Adolescent Treatment Health Center that came before the Commission. If overall project density is viewed broadly the county would have to construct affordable housing based on a subdivision action. So we tend to look at what is within the lines verses what is broad because it could lead to an absurd result.



Mr. Katayama: May I ask another question? In the case of zoning amendments where you have this creep what prevents an applicant from putting in applications nine units at a time when the intent for the land available, and I am looking at schedule b, they are submitted with the number of tax maps that is within this parcel. It is certainly more than nine.

Mr. Dahilig: I think what is being illustrated here is the weakness in the ability to clearly apply the bright line standard in the housing ordinance. This has been a bit of a struggle in terms of how our department will interpret it but at the end of the day it is the Housing Agency's jurisdiction to interpret what is or is not applicable so whether segmentation as you were describing is something to be or not be prohibited it is really a jurisdictional question with the Housing Agency. However I would suggest this body is also responsible for making any evaluations whether something is within a proportional nexus standard, which is a constitutional standard under a litany of federal case law. So whether that runs afoul of the housing ordinance also needs to be weighed in particular because applying it repetitiously could lead to over exactions. That is why my suggestion at this junction is to hear what is on the table and send the body of facts over to the attorney to do an overall evaluation because they can serve as an arbiter between what the Housing Agency is proposing verses the jurisdictional responsibility of this body.

Mr. Katayama: But in reviewing the application as presented there is a potential for a lot higher density of development rather than just nine units.

Mr. Dahilig: Right and whether that can be cured away by condition or not I think is a question of how that needs to be resolved. What I am hearing from the Housing Agency is that there is not a proposed condition at this point being put on the floor, rather just saying that it is applicable. And whether that can be refined I think is the question.

Mr. Katayama: Is that the proper venue for enforcing that statute?

Mr. Dahilig: There are two ways to enforce it. When you look at the Housing Agency they have their own enforcement powers but because we bundle them as part of our Chapter 8 requirements. In this circumstance it would potentially become a condition of law because of the zoning amendment nature of this so this would get forwarded to the County Council and then they would either enroll it as part of their overall conditions of the rezoning action or not.

Mr. Katayama: I think that is going to be a challenge but I'm willing to listen.

Chair Keawe: Thank you Ms. Fu, we are still in the public hearing portion of it. Is there anyone else that would like to testify?

Ms. Fu: Am I still able to speak on the matter though?

Chair Keawe: Yes.

Ms. Fu: I wanted to bring up to the Commissioners that part of why we are in this kind of gray area right now with the housing ordinance is because the parcel it's self has not received final subdivision. It has only received tentative approval. So though they are proposing ten lots it is not completed until they have met the conditions under the subdivision permit S-2015. That is before the Commission as well. Technically they could cancel their tentative and re-subdivide so nothing is final which makes it in the best interest of the Housing Agency and the county to put the applicability on and then lay out conditions for approvals with the zoning amendment permit. And that is what we are asking for, thank you.

Mr. Dahilig: Given that the Housing Director has offered that she is asking for something is there language that we could receive? I think that would be helpful, from the agency, concerning the conditions. If the Commission is going to be moving forward with the discussion today, probably having that particular proposed condition or language that you would like to see in the actual application would be helpful for the deliberations for the Commission.

Chair Keawe: Could you submit, Ms. Fu, language that you think would address your concern?

Ms. Fu: We can and that would be upon completion of a review by the County Attorney. The Housing Agency is preparing a request to the County Attorney for review and for delivery of a legal opinion whether or not the ordinance applies to this particular parcel so we need that opinion first and that review completed. If it does, which we suspect it does, we would prepare conditions. If it doesn't we could move forward. So there is this time period that is needed by the Housing Agency to complete our legal review or attorney's legal review. And just to point out we submitted comments that it was applicable and we are going based upon the application that was delivered to us. There was no formal amendment or things that were transmitted.

Mr. Dahilig: I disagree with that, there was a transmittal.

Ms. Fu: No, the transmittal, but it is not formal. It is not permanent so until it comes to the Planning Commission and you guys accept the amendment to the application...

Mr. Dahilig: That is in there.

Ms. Fu: I am on before them so is not on record yet.

Mr. Dahilig: I would just like to confirm for the record so the Commissioners understand that what is in your packets is the amended application so I don't want to give misinformation that what is not before the Commission is the previous application. There was an amendment included as part of the reading materials that was submitted so just for clarity's sake.

Ms. Fu: Yes. That hasn't been approved by the Commission. That is what I am trying to say.

Chair Keawe: That part we understand but it was submitted.

Ms. Fu: Yes, it has been submitted, it is in your packets but it is not an approved amendment.

Chair Keawe: Understood.

Ms. Fu: So we are continuing. You guys could decide not to approve the amendment that's why so I need to ensure that we have the opportunity to comment on the zoning petition, that's all.

Ms. Ahuna: Director, will there be time on that timeline for her to be able to put in conditions or actually review before it comes up for final approval for what Ms. Fu just shared? My concern is that the final approval will happen before that takes place.

Mr. Dahilig: I understand and I think in light of that, I agree that we do need to get this issue resolved before this gets forwarded to the County Council. Our recommendation would probably not be to actually close the public hearing this morning to leave that window open for further discussion on this because I believe we want to send the County Council a completed and resolved product before something gets up there. That, I think, is in everybody's interest.

Chair Keawe: Anything further Ms. Fu?

Ms. Fu: No. Thank you.

Chair Keawe: Thank you, anyone else needs to come to the front? State your name please.

Mr. Art Sunozia: Aloha, my name is Art Sunozia, I am an owner adjacent to the parcel owned by CIRI. I have had continuous discussions with representatives of CIRI and in fact was encouraged to come here today to ask a question that they were unclear about. My first comment is really a question. The public notice for the hearing today was the addition of the parcel to the visitor destination area yet the ordinance that is being proposed is talking about a change to the timeshare boundaries, not the VDA. So I am a little unclear if there is a distinction between the visitor destination area and the timeshare boundary area because the public notice talks about requesting a revision to the visitor destination area boundary but yet the ordinance will talk about an addition within the timeshare boundary. So may I ask for clarification?

Mr. Dahilig: If you look at the chapter relating to, specifically 8-17, overall, it uses synonymously the phrase visitor destination area as well as timeshare boundary so they are both interchangeable.

Mr. Sunozia: I did look at the County Code yesterday and even did a word search and couldn't even find the definition of the terms but as I understand they are used interchangeably.

Mr. Dahilig: They are interchangeable based off of section 8-17.

Mr. Sunozia: My second comment and I truly do believe that CIRI has been open and direct that their intent is to allow the future lot owners for these single family lots to be able to rent on a short term basis and that is why they are seeking the change. My concern is that that is the present intent. I have no question about a motive otherwise. However should things change and the entire parcel be sold and as we just heard the permit is not final yet, it would open up that parcel to high density housing, timeshare housing, condo housing, etc. So my request of the

Commission is should you feel that the request should be granted, I would ask that you would consider a condition of the permit that it is limited to the nine single family lots that the applicant has put forward in their permit as presently configured in the subdivision that was approved by the Commission so that we don't have a situation where other entities may purchase the property and then have no limitations.

Chair Keawe: Thank you for your testimony. Do we have anyone else to testify on this item? If not we will leave this public hearing open.

Mr. Dahilig: Mr. Chair we would recommend moving on to the next agenda item.

## **CONSENT CALENDAR**

### **Status Reports (NONE)**

### **Director's Report(s) for Projects(s) Scheduled for Agency Hearing on 2/14/17**

Class IV Zoning Permit Z-IV-2017-3, Use Permit U-2017-3 and Special Permit SP-2017-1 to allow replacement of an existing monopole with a 60 ft. high monopine tower and associated improvements at the Kilauea Japanese Cemetery near Crater Hill, approx.. one mile north from Kilauea Town, at the end of Mihi Road, further identified as Tax Map Key (4) 5-2-004:049, and affecting a parcel approx.. 1.997 acres in size = *New Cingular Wireless PCS, LLC (AT&T)*.

Director's Report pertaining to this matter.

Class IV Zoning Permit Z-IV-2017-4 and Use Permit U-2017-4 to allow construction of a 0.5 MG reservoir, production well, control building booster pump station and associated improvements and Variance Permit V-2017-1 to deviated from the land coverage requirement within the Agriculture (A) zoning district, involving a parcel situated on the eastern side of Puuwai Road in Kalaheo, immediately adjacent to property identified as 5316 Puulima Road, Tax Map Key (4) 2-4-003:007, and affecting a parcel approx.. 0.755 acre in size = *County of Kauai, Department of Water*.

Director's Report pertaining to this matter.

Mr. Dahilig: The rules on this is that if two Commissioners wish to pull an item off for discussion then it would move to New Business, otherwise we can go onto the next agenda item.

Chair Keawe: Any Commissioners want to pull any of these items off for discussion at this time? If not we will move to the next agenda item.

## **GENERAL BUSINESS MATTERS**

Petition (1/6/17) to Appeal the Planning Director's Decision Related to the Forfeiture of Non-Conforming Use Certificate TVNCU #4291 (Pohaku) for Failure to Timely Review, by

Thomas Brooks, Tax Map Key (4) 5-8-008:021, Haena, Kauai = **Thomas J. Brooks & Jennifer S. Brooks.**

Memorandum (1/11/17) from the Clerk of the Commission Requesting to Refer the Appeal to a Hearing Officer; Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal.

Mr. Dahilig: Mr. Chun is the agent on behalf of the applicant.

Chair Keawe: Mr. Chun.

Mr. Jonathan Chun: Good morning, Jonathan Chun on behalf of the appellant. The appellant takes no position regarding their request by the secretary of the Planning Commission except that they want to, for the record, reserve all objections they might have in regards to the process and procedures of hiring the Hearings Officer, the identity of the Hearings Officer, and/or any other kind of due process and/or Charter questions that might come about regarding the hiring of the Hearings Officer at this point in time.

Mr. Dahilig: The department would have no objects to Mr. Chun's placing that on the record.

Chair Keawe: Commissioners, the clerk has recommended the Commission appoint a Hearings Officer to conduct if required a contested case hearing related to this item. Do I have a motion?

Ms. Ahuna: I make a motion to move it to a Hearing Officer.

Mr. Katayama: Second.

Chair Keawe: It's been moved and seconded, all those in favor. (Unanimous voice vote)  
Opposed? Motion carried 5:0.

**COMMUNICATION (For Action)** (NONE)

**COMMITTEE REPORTS** (NONE)

Subdivision (NONE)

**UNFINISHED BUSINESS (For Action)** (NONE)

Mr. Dahilig: We turn back now to our New Business item G.2(a), Class IV Zoning Permit Z-IV-2017-2 and Use Permit U-2017-2, Mauna Loa Helicopter Tours, LLC. I do want to recognize Alex Wong who is our newest planner and will handling this particular matter.

Chair Keawe: Mr. Wong, welcome.

Staff Planner Alex Wong read the Director's Report into the record (on file).

Chair Keawe: Any questions for Mr. Wong from the Commission? If not can we hear from the applicant, Mr. Jung?

Mr. Ian Jung: Good morning Commissioner Keawe and members of the Planning Commission, Ian Jung on behalf the applicant Mauna Loa Helicopters, LLC. With me is Guy Croydon who is a representative of Mauna Loa Helicopters. Thanks to Mr. Wong for the very thorough report. To add a bit of perspective I do have two illustrations for you. The first here is just to give you a locational perspective of where we are talking about. This is the helicopter facility, heliport. The proposed project is going here where the yellow arrow is. The two permits that were identified in Mr. Wong's report is one here, at the end, and then the Blue Hawaii facility is here down at the other end. Just to provide a little context to the site plan, this is the site plan that has been revised per the request of the Planning Department; here is the twelfth stall that was added. At the top here you see the office that is proposed, 1,800 square feet, the hanger, technically 3,800 square feet with the additional footprint around it, and then the pre-boarding shelter here. This entire area here is the leased location from the State of Hawaii. One quick clarification since we are on the topic of alternative facts, we did mistakenly put in our memorandum in our supplement 1 to the Planning Director's report that it is actually leased at an annual rate in three phases from the State of Hawaii for \$60,000 annually per year, not for a five year period of time. So on the first phase between \$60,000, it's \$60,000 annually from year's one to five and then \$70,000 annually from year's five to ten, and then \$80,000 annually from year's ten to fifteen.

Chair Keawe: I was a little confused when I read that.

Mr. Jung: My apologies for that. To give a brief description of the historical context of the project, in 1990 this interim heliport facility was built to comply with a 1986 Lihue Airport Development Plan. Thereafter they realized that they didn't have adequate support facilities for the helicopter vendors so the Airports Division decided to do an expanded heliport which allowed for the tenant improvement spaces which are not being required through the lease to be improved within the first year of the lease entered by the applicants. So we are before the Commission based on the lease requirement to do the improvements but also it will benefit the applicant to fully operationalize their proposed operation. With that, I will be happy to answer any questions and Mr. Croydon is also available to answer any operational questions from how many helicopters they operate to where they fly.

Chair Keawe: Questions from the Commissioners?

Ms. Ahuna: Mauna Loa is from the Big Island and have you guys already been servicing Kauai?

Mr. Jung: Mauna Loa has been in operation since 2006. They are from the Big Island and also have operations on Oahu.

Ms. Ahuna: None on Kauai yet, this would be the first?

Ms. Jung: They have been in operation since 2006 here on Kauai.

Chair Keawe: Where have you been operating from?

Mr. Guy Croydon: Initially the operation was on the transient pads or permanent facilities outside of the heliport where the airplanes tie up. The State has been requiring everybody to move over to the heliport so for an interim period of time we were on a month to month lease on some pads. As of last year we entered into an agreement for long term lease of fifteen years and within that lease it requires us to build a structure.

Chair Keawe: Offhand do you know how many flights are flown out of that particular facility with all of the helipads on a daily basis on Kauai?

Mr. Croydon: The entire? I could speculate. Blue Hawaiian may have as many as eight helicopters flying, as many as eight flights a day. Then you also have Island with three helicopters, Safari with two helicopters, Sunshine Helicopters with I think five helicopters including one operating out of Princeville. Mauna Loa, we have three helicopters and the most we do is six flights a day, normally five flights a day. Adding all that up and multiplying out five to six flights a day I would speculate it is well over a couple hundred flights a day.

Chair Keawe: Are there any concerns about safety? Obviously you have tremendous safety protocols with that many helicopters. My concern is mainly just the flight patterns of over two hundred flights a day and all doing the same thing, all doing the tours of Kauai. Obviously there is a concern where we get to saturation point.

Mr. Croydon: The reality is that there is a protocol as far as how we do our tours. It falls under this particular FAA Part 136 Exemption that has requirements with respect to altitudes, reporting points, etc. Actually we just had a safety meeting amongst all the pilots and the FAA a few months ago with respect to specific issues in terms of potential for problems, mid-air, etc. That led to meetings with each individual company's chief pilots and their pilots to discuss ways of improving the safety out there. And then later all the chief pilots got together and discussed the same thing and came up with recommendations that we are all following to further enhance the safety of the operations around the island. It is a concern and it is incumbent upon pilots in particular to be very vigilant in their duties.

Chair Keawe: I'm glad to hear that. Obviously the more that that happens especially communications among chief pilots and staff the better I think the safety protocols will be for all; any other questions for the applicant? Mr. Katayama?

Mr. Katayama: Of the parking spaces available as outlined in your application how many of those are available for passengers?

Mr. Jung: The parking spaces that are noted in the original application and the supplemented with the application from the Director's report, those are actually per CZO. There is a spill over site that could be utilized that will not be paved that they are currently in discussions with the State to acquire so there will be additional spillover parking outside the confinements of the CZO requirements. But in terms of operationally do we have people who will be picked up at hotels and shuttles or are people going to come and park?

Mr. Croydon: Most of the public will be coming and parking. We have a smaller operation. Our aircraft only carry a pilot and three passengers as opposed to other aircraft that carry seven passengers so a relatively small number of people coming and going. There will be a shuttle service as well to the hotels that are close and to the harbor for people coming off the boat. We currently lease three pads, the two pads adjacent to the property that we are building on, also another pad two spots further over and there is an adjacent property similar to the one we are building on that is just unimproved land and that provides a large amount of space for parking.

Mr. Katayama: The formula for parking spaces really does not comprehend the kind of business that you are running and I would hope that you have enough capacity to expand from your current flight schedule. You should not say this is the maximum of traffic; you always want to get better. However when we look at the CZO computation of parking it is based on building square footage which has nothing to do with the amount of passenger flow through his terminal. I think that is the challenge and how do you comprehend that without creating congestion and as the Chair first mentioned there are several companies with two hundred flights a day and hopefully they will add more to that to be successful.

Mr. Jung: Just as a brief response, if there are five employees there we will look at five stalls there and then the flight patterns are arranged between a sixty minute and seventy five minute tour. So if it is a one to two seater we can anticipate maybe two cars coming in, two additional cars per sixty minutes with an overlap so it looks like we would be, with twelve stalls, within that framework of accommodating two to three stalls for employees and the two additional and maybe a third additional stall for the visitors.

Mr. Croydon: Our tours are private tours so the odds are that all the people that are going to be boarding that particular aircraft will be in one vehicle. We don't mix customers. If there are only two people we operate the flight with two people. If there is only one person they have to pay for two seats but we don't bring in single people and board them with a third person in one aircraft. So every tour is a private tour. The volume of traffic should be much less and again, the extra piece of property we have, the current one we are building on is forty something thousand, thirty thousand square feet. We also have a piece that is half that size.

Mr. Katayama: That can be used for parking?

Mr. Croydon: Yes.

Chair Keawe: Any other questions from the Commissioners? Mr. Wong can you give us your preliminary recommendation?

Staff Planner Alex Wong read the department's preliminary recommendation (on file).

Chair Keawe: Does the applicant agree with the conditions?

Mr. Jung: Yes, the applicant has reviewed the conditions and has no objection to them.

Chair Keawe: Any further discussion on this item, if not I will entertain a motion. \



Ms. Ahuna: I move to approve the Director's report.

Ms. Apisa: Second.

Chair Keawe: It's been moved and seconded for approval, all those in favor. (Unanimous voice vote) Opposed? Motion carried 5:0.

Commission recessed at 10:00 a.m.

Meeting called back to order at 10:23 a.m.

Mr. Dahilig: Thank you Mr. Chair, we are now on item G.4(1), Zoning Amendment ZA-2017-2 amending ordinance 436, Tax Map Key (4) 2-8-021:041, 044 through 068. Mr. Chair I actually did this particular report myself and what is being proposed is the applicant is requesting to move the visitor destination boundary or timeshare boundary demarcated on our official zoning maps around the parcels affected by this particular petition. The effect of moving a visitor destination boundary around an area on a map is to create additional entitlements under the law, in particular this parcel is zoned open but does have an urban based designation pursuant to State Land Use requirements. We have looked at the 2000 General Plan, and again this does seem a bit uncanny but the area that is designated as open is marked in our General Plan as resort. So it is consistent, this proposal, with the county policy concerning special regulation of our land and otherwise. Along with the review we are viewing this area as consistent with the South Kauai Community Plan which takes the 2000 General Plan and carries it through to the 2015 policy that was adopted by the council a year and a half ago. So for those reasons the department does not have any objections directly concerning this adjustment.

What has also happened prior to this is that the applicant has come in for a class III permit, subdivision approval, and an SMA permit. The SMA permit was required to move forward with the subdivision and currently the applicant is in the process of meeting those requirements created at tentative subdivision approval. We are as you mentioned earlier concerning the housing issue still in the midst of trying to resolve whether this particular application, based off of the lines that are drawn under the amended proposal transmitted to the Commission, is or is not applicable. I think that is the only question the department would lay on the floor right now but other than that the department did not have any additional conditions to attach to the proposed zoning amendment other than what was originally proposed in the draft bill that was circulated as part of the Director's attachment. I would like to entertain any questions Mr. Chair and if not then we can go to the applicant.

Chair Keawe: Any questions for the Director from the Commission? If not is the applicant here or applicant's representative?

Mr. Michael Belles: Good morning Mr. Chairman, members of the Planning Commission, for the record my name is Michael Belles representing the applicant. Sitting to my right is Sophie Minich; she is the President and CEO of CIRC Land Development Company. Before I get into the how, the whys, and the wherefores of what we are going to do, I would like you to know a little bit about CIRC first. I know a couple of you were on the Planning Commission when this

was last heard for the SMA and went through the subdivision process but for the new members of the Commission I think it is important to understand the nature of CIRI, what they are about, where they are from, their sensitivity about development of land not only here in Hawaii but wherever they have their land holdings. So before I get into the technical issues and some of the issues that were broached earlier this morning about the VDA verses the subdivision, about total density and how we should deal with that I will get to that a little later. First I want to introduce you to the client and let her explain a little bit more about her and about their stewardship of the land, thank you.

Ms. Sophie Minich: Good morning Mr. Chairman and Commissioners. It is my honor and privilege to be here today representing over 8,800 Alaska Native people that own this parcel of land. Just a little bit of history, CIRI, Cook Inlet Region Inc., is the parent company of the petitioner in this matter, our entity CIRI Land Development Company. CIRI was created back in 1971 following an act of the United States Congress to settle the aboriginal land claims in Alaska and CIRI is one of twelve land based regional corporations that represent Alaska Native people. We, today, have grown from a company of just over 36 million dollars when we were brought into creation forty five plus years ago to a company managing over almost close to a billion dollars in assets and we have also paid out over a billion dollars in dividends to our shareholders.

So you might ask how do we do that, we do that through a very diversified portfolio of assets that we manage every single day and our parcel of land here in Kauai is just one of those investments that we have. You might ask how did you come to acquire a parcel of land in Kauai is really important to understand that story. So when congress did the settlement there were two assets that our land base companies received, one of course being land and the entitlement to certain acreage of land in Alaska and some cash. And they were told to go forth, these corporations were told to go forth and to provide socially, culturally, and economically for our shareholders. When CIRI went to go and make our land selections, and we represent the south central portion of Alaska which houses the biggest city in Alaska which is Anchorage, a city of close to 300 thousand people, over half the state's population lives there. It is also the home to two major military bases, a lot of federal government land there, state land holdings, municipalities. So when we went to make our selection of our lands we were unable to fulfil our entitlement and recognizing that this was an act to compensate for our historical lands we back to congress and had passed what is known as the Cook Inlet Land Exchange. That Cook Inlet Land Exchange was monumental in that it gave CIRI the right to have some chits with the federal government that could be used to purchase federal surplus properties. And that brings us to Kauai, this parcel of land at Poipu Point was a federal surplus parcel that was historically held by the United States Coastguard. So we purchased that property using those chits and have held it in our portfolio for decades now.

Going back to who CIRI is and what we do I would start by saying again, our mission, and that is it promote economic and social wellbeing of our Alaska Native people and to provide for them economically through the stewardship of our assets and our resources. And not just for now but now and into the future. We have several of our values that guide us each and every day in what we do and we represent our people and I think it is important for each of you as Commissioners of this beautiful country to understand what it is that is important to us as we go into any development that we might do outside of our own lands, on other people's lands, and in other

communities which we work and operate and we have investments. Our values are the standards that we conduct ourselves upon each and every day, it is what we expect of our shareholders, how we expect to treat our shareholders, our descendants, our business partners, the communities in which we operate and we have investments in. The first of those values is that we are mission driven. We have a mission to provide socially, culturally, and economically. And we look at that and ways to do that by adding value, by being interactive, by being innovative, and by taking action in the best interest of CIRI shareholders.

Secondly, we operate out of the value of excellence. We produce high quality work, we think creatively, and we are accountable for our results. Thirdly, and what probably in my view and everybody else's view at our company is honor. The value of honor is to do the right thing for the right reasons and the right way. And honor is the heartbeat of what we do each and every day. We demonstrate that through fairness and integrity. We deliver on our promises, we always are trustworthy, and we take responsibility for our actions. Second to the last value that we operate on is respect. We respect everybody with dignity, we treat them with dignity, we show empathy, and we embrace the history and the heritage of our people, our land, and our resources. And lastly, unity, we actively engage in teamwork, we share information, we learn from others, we promote open and truthful communications. We assume good will and we view our differences as an opportunity to find solutions. We promote and advocate in everything we do and we participate with humility, with joy and with fun.

Since the day we have started down the path of recognizing the economic value of our land at Poipu Point we have brought these values into every conversation along the way. We have done that through multiple community meetings, not just with our adjacent neighbors but with others around the community, the adjoining communities, we have had open communication with leaders here in Kauai and elsewhere to make sure that we were doing the right thing for the right reasons. We have embraced your local economy by adding local experts to our team of individuals working on this project to make sure we understood what was most important to each and every one of you on this piece of land. Like you we value our land. Our land is at the heartbeat of our company. It is the reason we were formed for our shareholders. And so part of the discussion this morning has centered around the ten lots that you have before you and our desire to have nine of those ten lots entered into the VDA.

Recall, and you are going to hear a little bit of history from Michael as he presents, that when we first had this land, our first entitlements are to twenty six lots. And when we looked at that a little over thirteen acre parcel of land and we went through our values and we went through what does it mean to have a development in such a pristine area we quickly recognized twenty six lots was not being responsible. It was not being community minded, it was not showing the value of our excellence of unity and respect. And it is why we came before this Commission. We have over the eight plus years of trying to develop our parcel into what it is before you. We have pushed forward on that because we see the value of not having twenty six lots with potentially twenty five homes on them. We see the value of a nice community with ten residences on them. So with that, I appreciate your opportunity to be here this morning. I appreciate any questions you may have. I appreciate your consideration of our application and I am happy to answer any questions, thank you.

Chair Keawe: Any questions from the Commissioners?

Ms. Ahuna: What are your intentions in regards to the proposed ten lots, for vacation rental, for residential?

Ms. Minich: CIRC Land Development Company is just developing the ten lots. We are not going to be in the business of building homes on them. We will put the lots up for sale to individuals that wish to build a home on those lots but we will not be building the homes, we will not be operating the homes at such time they are sold.

Ms. Ahuna: So the change from subdivision to VDA is for what purpose?

Ms. Minich: It is not a change to our purpose it is just an overlay on it. In the event these are likely going to be...let me step back a little bit. Part of our process was we had meetings with multiple people around the community that have worked on developments such as this to talk about what is it that potential lot buyers and potential homebuilders might see of value to their land. And one of the things that came up with some of these homeowners, you look at these as second residences and may like to potentially have the opportunity to rent their home out and so that is why the VDA and the overlay on the land is being asked for. It would allow them the opportunity, if they so choose on an individual basis, to rent their home out.

Chair Keawe: Any other questions?

Ms. Apisa: Since you are going to be selling the land are you establishing the building conveyance and guidelines in your subdivision?

Ms. Minich: Yes.

Mr. Dahilig: Also, just to confirm Commissioner, the base approvals through Class III zoning as well as the SMA permits do also create a foundation for whatever conveyance they are going to put on which the Commission has reviewed concerning form, character, and even things like lot coverage. So because the area is zoned Open, the same lot coverage percentages are still going to apply and they haven't asked for a waiver from those.

Chair Keawe: Any other questions from the Commissioners? You mentioned the stakeholders or shareholders are those 8,800 members?

Ms. Minich: When CIRC was first formed back in 1972, that is when we were officially incorporated. The original enrollment process that occurred in the State of Alaska for Alaska Native people, you had to be born by December 17, 1971 and have at least a quarter blood quantum, Alaska Native blood quantum. At that point in time CIRC's original enrollment was 6,280 shareholders. Forty five years later because shareholders have passed on and have willed their stock to multiple members of their family, institutions, etc., we now have almost 8,800 shareholders, the majority of which are Alaska Native shareholders.

Chair Keawe: So it was originally a blood quantum that was the key aspect of forming.

Ms. Minich: Yes.

Chair Keawe: How do you pass on the profits or gain on these investments to your shareholders?

Ms. Minich: CIRC, each of the corporations has a variance of how they do their dividend policy and how much dividend they produce and what economic benefit they give their shareholders. CIRC has always felt that the way to make an economic difference in the shareholders lives was via a dividend and so we pay annually a dividend to the shareholders based on a percentage of the prior year's ending shareholders equity. Today the average shareholder with one hundred shares receives about 3,700 dollars from the corporation. And in addition to the dividends of course we have job opportunities with our various subsidiaries and companies and we have a very large family of nonprofit services that provide the social and cultural aspects of our mission and they are also major employers in the Anchorage area and surrounding areas.

Chair Keawe: Are there any educational programs that obviously would benefit your shareholders?

Ms. Minich: Absolutely Mr. Chairman, it is one of the things we are most proud of. CIRC established a nonprofit called the CIRC Foundation; it is our private foundation that we endowed nearly two and a half decades ago with 53 million dollars. And in that time our endowment has paid out over 27 million dollars in scholarships and grants to our shareholders and their descendants.

Ms. Ahuna: In your characteristics of the subdivision, because you are a native organization, do you have any requirements so to speak, to require the residents to put in native plants or native features, historical features, cultural overlay?

Ms. Minich: We have, right now today in our landscaping plan, brought in a local company and I forget the name but a Kauai landscaping company that is going to put in local vegetation in the common areas of the subdivision and we are working on that landscaping plan right now that would incorporate that.

Ms. Ahuna: As well as any support to some of the stewardship around the area like Kaneioulouma Heiau or some of the cultural features or historic sites in and around the area?

Ms. Minich: We had the area assessed for historical sites and there were none found on it.

Ms. Ahuna: I mean any regards to supporting community cultural historical sites in and around that area where you are building.

Ms. Minich: To the best of my knowledge today we have not although we did support one organization that was developing the cultural site, and the name escaped me, Rupert Rowe's project. We did help support that project.

Chair Keawe: Mr. Belles, anything further?

Mr. Belles: Kind of laid waste to my presentation but I will try and use a scatter gun approach and reassemble as best I can. What I wanted to do is just give you a brief outline of the history of the use of the property to understand why we are where we are today. Back in 1951 this was Loran station and that is just a long range navigational system that was operated by the Coastguard until the 70's and by that time it was antiquated technology so most of it got phased out through the United States. And doing some research on that if the question was asked I found that the last country to continue using Loran stations of the final caliber was actually Japan and they stopped using them in the mid to late 80's. So it is a system that is no longer in place and it is one of the reasons why the United States decided that this would be a surplus property that would be put in its inventory and ultimately CIRI was fortunate to acquire it using as Sophie explained, several bids to acquire this particular piece of property.

After the Loran station closed down Hale Opiu operated it for a couple of years until Hurricane Ewa hit in 1982 and then pretty much from that time on the property remained vacant. It was not being utilized by anyone. There were still concrete structures there and facilities but it was an area that pretty much a lot of the youth hung out after bodysurfing at Brennekes or some of the other local places in the South Shore but wasn't anything that was amenable to having family activities. Some fishermen go out there occasionally but it wasn't a highly used recreational area, you have much better facilities down the road at Poipu Beach Park and places like that as you go into Mahalaepeu obviously, if you wanted your privacy and a different kind of environment. After Hurricane Ewa the property was conveyed by the United States to CIRI in 1996. CIRI took quite a bit of time in deciding what it wanted to do with the property. It really studied it carefully and it took them almost eight years to decide upon a subdivision. As it was earlier explained the original configuration of the property did allow for twenty six lots and they recognized as Sophie explained that that was too intense a use of the property and wasn't appropriate to the neighborhood and to the environment. And as a result they came in and got an SMA in 2014 that would allow for a ten lot subdivision on the property. In 2015 the subdivision received tentative subdivision approval. I believe one or more members on this Commission participated in that so you know the history of it.

And just to refresh your memories this is what it looks like and I apologize because the distance you are at and if you have vision like mine it is going to be hard to see but the point is that this is an engineered piece of property that did receive tentative subdivision approval. And based on that tentative subdivision approval, this is obviously engineered but it gives you an idea of the multi-family projects around it and then the ten lot subdivision that was created by the tentative subdivision approval that was granted in 2015. Since the tentative subdivision was granted they have expended almost 2.5 million dollars in construction. I hate to say it now, worst of all timing but they are currently doing blasting and other heavy work on the property right now to prepare it to put it in the necessary infrastructure but just the work for design, engineering, and all the other things that are necessary and then the preliminary construction. They are well under way and I would throw out the term that I believe they are vested to complete the project and assuming they comply with all conditions of tentative subdivision approval that final subdivision approval would in all likelihood follow, this Commission permitting. And that is anticipated to be in the last quarter of this year when they would come in for final subdivision approval.

It is a substantial investment. It is a long period of time that my client has spent planning this in the most sensitive way possible. One thing I would like to point out in deference to public access and local issues. If you see this line here running the perimeter of the property, which is a moss rock wall that is going to be installed. And on the Makai side of that there is going to be a pedestrian right of way which will allow for continuation on both sides going both east and west for all other existing public access. So it is something they recognized early on that it was important. It was something that was raised during the subdivision approval process and it is something that they did not resist, in fact they encouraged it so it is something they are doing and they believe it is very important not to interfere with public access.

Chair Keawe: Mr. Belles, if I understand correctly there will still be public access on the other side of that moss rock wall.

Mr. Belles: Absolutely.

Chair Keawe: No restriction.

Mr. Belles: Correct. We will have to resolve issues with the Planning Department in terms of parking to make sure there is adequate public parking but those are things that are still going to be a work in progress. We have also filed with the Planning Department a comprehensive set of design guidelines. I am just going to flip through the pages, we do have graphics showing the ten percent lot coverage which is permitted in the Open District, location of buildings, setbacks from the shoreline to make sure that we are in compliance with all applicable state and county laws, rules and regulations. There are also requirements on general design of the buildings to make sure they are in keeping with the character so that we don't have domes and other structures that sometimes are frowned upon by people in the community. They have done their best to integrate a well-designed and appropriate subdivision for this particular locale with minimum intrusion on the neighbors, recognizing that no intrusion would be preferred by any neighbor but considering that they will be single-family residences limited to only ten percent lot coverage on large parcels we believe that any of the adverse impacts that you would typically find are largely mitigated by this. Again I will just say that the Planning Commission has the final say when my client comes in for final subdivision approval to make sure and satisfy you that indeed all the conditions of the tentative subdivision approval have been complied with.

In formulating the process and coming up with the plan I would like to extend a great deal of gratitude as always to the Planning Department. In this case it is unique that we actually have the Planning Director work closely with us and giving us guidance in terms of how best to deal with VDA issues because VDA often gets confused with rezoning and changing the character and use of the land. The reality is that physically the property will look the same with or without the VDA overlay. All the VDA does is allows for timeshare ownership or for rental of the property per the VDA ordinance. You have heard references to the transient vacation rentals, there are limitations to the periods of times that it can be used so that is what we are asking. All the neighbors around us are within the VDA and have the ability to have timeshare or to have transient vacation rentals within their own by-laws; they can restrict it on their own. As I understand some of them have. But in our case we believed that the intent being to sell the property that it would enhance the value of the property to have the added value of having the

ability to have either timeshare or rentals available for the units. But in terms of what is physically on the property that is not going to change.

I clearly understand the housing administrator's comments today, I understand it and I appreciate it and I respect it because the county and government should look at what is the worst case scenario. What if CIRI dissolved tomorrow which is not going to happen and this land turned over to somebody else and they wanted to rezone the property and come in with an entirely different project or revert back to the original twenty six lots. What would happen? They are going to start all over with you again. And is that likely to happen with the amount of time that CIRI has invested not only in terms of sweat equity and energy and thought but also the financial investment they have put into that? It is not likely to change and since we are literally encircled by the VDA, it is only an accident of history that this property was not included within the original VDA because it was federal lands at the time and the county as well as the state knew that it cannot regulate or they were preempted from regulating state or federal lands because they are a higher authority so this parcel was left out. We believe that there are adequate checks and balances to protect the interests expressed by the housing administrator but that having been said, in the interest of giving the County Attorney's office the time that they need to study the history of this project, understand the facts better because the facts often times as we know drive the legal conclusions, we would have no objections to a two week deferral by the Planning Commission to have the matter referred over to the County attorney's office per the request of the Housing Agency to look at this and then report back to you. I wanted to have the opportunity to explain to you what our position on what the law is. We actually have a condition crafted right now which has been forwarded to the County Attorney's office, to the Housing Agency, as well as to the Planning Director and it is not something that I think would be appropriate to introduce right now, if anything it may complicate matters. I don't mind sharing it with you if you want to see it but it is just maybe premature. If you want it I will give you copies right now just so you can look at what we are thinking of doing and then at the end of the day leave it up to the County Attorney to decide what he wants to advise you on.

Chair Keawe: What is the pleasure of the Commission? Obviously based on what has transpired today we won't be able to arrive at any kind of decision but, Mauna Kea, do you have something to say on this issue?

County Attorney Mauna Kea Trask: Aloha Chair, Honorable members of the Planning Commission, Mauna Kea Trask, County Attorney. I would just like a brief moment to thank you for the opportunity to talk, thank the applicant, and just confirm that the County Attorney's office would be requesting subject to your approval a two week continuance. I believe that would be the meeting of February 14<sup>th</sup> to look at this issue. Real briefly, this is the first time I have heard about this and so it is really refreshing to see first off a native people getting into the development business. As a Native Hawaiian I hope one day we are so lucky in some way, shape, or form to be a billion dollar entity. We appreciate to hear that they are willing to look at final subdivision like Mr. Belles said, like the applicant said. We acknowledge that they would be sensitive to the public access issues and everything that is attended to that. It is really good to hear they supported Uncle Rupert and the county's efforts at Kaneioluma. As you all know that was a gem that no one ever knew was present. This is that last corner lot that hasn't been developed on Pe'e Road, Poipu Crater area, this is the lot where you would end up walking from



Shipwreck Beach, Keonelo, I believe, is the real name. You come out heading towards Poipu Beach Park in that chained lot and it has been closed. I never knew why and now I know. But there is a question as far as the applicability of 7(a), the housing requirements. This is kind of a complex issue like Mr. Belles said, the VDA is an overlay, it doesn't address the density of the project and the nine versus the ten. What is ten, what is an overall project density mean? These are fair questions. I think all parties acknowledge they are difficult to look at. And so I had just heard that the Housing Director had some concerns about this issue and the County Attorney recognizes in the Charter that all county departments shall work with each other and cooperate with each other as well as state departments and federal agencies as well as under the Charter we shall cooperate with private entities. In this case the native people and the development of this process. So in the interest of moving forward together in a pono manner we just ask your permission so we can look at this and make sure that our workforce housing, which is a term of art, it is affordable housing, that is what it is, it is housing for the people of Kauai and how that relates to every project, even residential. In this case residential/possibly visitor oriented. That is all; I don't want to talk too much. Mahalo Nui Loa, thank you.

Ms. Ahuna: I think that the Housing Director, from my understanding, her intention was to look at how this project would somehow benefit workforce housing and the change in the density going down under possibly to nine or even lower as an option to you guys changing to a VDA. It wasn't the concern, I think, about maybe you guys pulling out of the project and then some new people coming in. It was more like what kind of benefit would be given to workforce housing. Is it in the form of money or actually so that we can build units in that regard. And I would think that as a native organization you would have an interest or want to support that especially because our population here. As you know our lands are getting smaller and smaller with more development. So I think that, in regards to what I got out of the Housing Director's interest in changing over to a VDA. And then also my other concern is just how do we keep the historical nature of the area, the geographic area, like Mr. Trask said in regards to names. Keonelo is that pathway area. I don't really care what happened after 1951 but prior to 1951, what is the historical cultural significance of that land and how does this organization, this native organization bring that forward so that is not lost. Historically bring that forward to present. I would like to see that, we don't want to lose these names and the historic nature or cultural significance of this area. Should development move forward how can we implement that into that project or into your project I should say.

Chair Keawe: Any other questions from the Commissioners? Mr. Belles, do you have any further information?

Mr. Belles: No. In response to your last comments Commissioner Ahuna, there is an archeological assessment survey that was done and filed with the Planning Department. I believe they would be able to retrieve that for you, if not the Planning Director can get in touch with me and we can resurrect that and get copies to you if you would like to see that.

Ms. Ahuna: I am not so worried about that because I think if there were things that were found you wouldn't be able to move forward. However I would hope and it is not something that we can make you do but I would hope that a native organization as yourselves, CIRI, would just bring some of that cultural significance, that historical significance forward within your

development. As we all know these lots or these homes will be sold probably over a million dollars so how can we keep that significance, and it will probably be sold to people outside of Hawaii that don't have a sensitivity to that or don't have an understanding or knowledge of it. How do we implement that? Again, that is not something that we can force you to do but as a native organization how do you bring that forward so that our culture is not lost?

Mr. Belles: Since it is well known that attorneys don't have hearts or souls I am going to let Sophie respond to that.

Ms. Minich: First and foremost thank you because I appreciate your comments. I wish every developer that came to Alaska had the same passion you do with respect to our lands. To that end CIRI absolutely is looking at ways in which we can address your concerns. We have reached out locally to a few people including an architect who has designed homes in the area that are suitable to the surrounding areas and not something that you would see in some metropolitan area. With respect to other ways to do that, obviously we have opportunities perhaps for signage, some vegetation and some markers along the coastline to address the cultural significance of the area and we will absolutely look into that so thank you again for your passion around that. You have my word we will look into doing something.

Chair Keawe: Mr. Katayama?

Mr. Katayama: Just a comment. After your presentation I have a lot more optimism that the issue before us right now on affordable housing can resolve hopefully in a good manner because in the way you presented your subdivision application with ten units and the way that your ZA was presented with nine units has sort of towed the line and really highlighted an issue in which our ordinances are written which create sort of that no man's zone of one unit. Given CIRI's values as presented this morning as well as its mission statement that gives it an advantage to federal lands, that you will be able to uphold your responsibility for the community as you have talked about for the Alaskans as well as for here on Kauai. I am hoping that the letter of the law does not outweigh the core values that the corporation has just spoken to quite eloquently this morning. Again, I look forward to February 14<sup>th</sup>, Valentine's Day, and hopefully you have the hearts and the courage to resolve that issue between the Planning Department and the Housing Department, thank you.

Chair Keawe: I echo Commissioner Katayama's sentiments. We appreciate your effort to come before us and explain who CIRI is, their values. I think that resonates with all of us that sit on this Commission. Mr. Belles are you agreeable to the deferral to February 14<sup>th</sup>?

Mr. Belles: Yes Mr. Chairman we are.

Chair Keawe: I will entertain a motion.

Mr. Dahilig: Just for the record no objection from the Planning Department.

Ms. Apisa: I move that we defer this for two weeks to our next meeting.

Mr. Katayama: Second.

Chair Keawe: It's been moved in seconded, all those in favor. (Unanimous voice vote) Motion carried 5:0.

## **ANNOUNCEMENTS**

Mr. Dahilig: Mr. Chair, we done with New Business this morning. I do want to make one adjustment to the announcements. We will pass out the on-deck sheets at the executive session for the Commission to review but the next scheduled meeting is actually next week Tuesday, January 31<sup>st</sup>, that is the workshop on the General Plan. We have distributed hard copies of the departmental draft for the General Plan for the Commission's review at the workshop. And just so the Commissioners are aware we are also asking for a bit of formal business at that meeting to open the public hearing because the amendment to the General Plan is viewed as an ordinance change so we will need to open a public hearing as part of that process. The next business meeting before the Planning Commission is actually February 14, 2017, on Valentine's Day. I will be wearing my red aloha shirt for that meeting.

Mr. Ho: Mike, you were going to distribute Mr. Belles's proposition to us?

Mr. Dahilig: I think they are going to withhold it pending discussion with the County Attorney's office. That was the suggestion based off what Mr. Belles was saying so since we are still on the record here I guess we will make sure that item gets over to the County Attorney's office for their discussion with them. And just for the record's sake we want to be clear to the jurisdictional elements do rest with what the Attorney's office needs to determine at this point. Other than that Mr. Chair the executive session is next.

## **EXECUTIVE SESSION**

Pursuant to Hawaii Revised Statutes Section 92-5(a)(2 and 4), the purpose of this executive session is to discuss matters pertaining to the evaluation of the Planning Director over the past and current fiscal year and to discuss any updates to fiscal year goals. This session pertains to the Planning Director's evaluation where consideration of matters affecting privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges and/or liabilities of the Planning Commission as it relates to the evaluation of the Planning Director.

Deputy County Attorney Jodi Higuchi Sayegusa read item I (1) Executive Session item.

Chair Keawe: Let's do a roll call vote to enter into executive session and then call a recess after that so we can take a break.

Mr. Dahilig: Mr. Chair I would also recommend that whoever would make the motion, if they choose too, also adjourn the meeting at the end of the executive session.

Mr. Katayama: I move that we go into executive session and recess thereafter and adjourn once we conclude the business before us in executive session.

Mr. Ho: Second.

Chair Keawe: Roll call vote.

Mr. Dahilig: The motion on the floor is to go into executive session, the then recess and then adjourn the meeting immediately at the closure of the executive session, Commissioner Katayama.

Mr. Katayama: Aye.

Mr. Dahilig: Vice Chair Ho.

Mr. Ho: Aye.

Mr. Dahilig: Commissioner Ahuna.

Ms. Ahuna: Aye.

Mr. Dahilig: Commissioner Apisa.

Ms. Apisa: Aye.

Mr. Dahilig: Chair Keawe.

Chair Keawe: Aye.

Mr. Dahilig: Five ayes Mr. Chair.

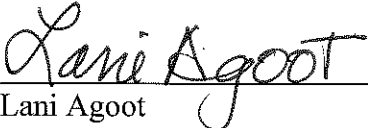
The Commission recessed this portion of the meeting at 11:10 a.m.

The meeting resumed in Executive Session at 11:27 a.m.

### **ADJOURNMENT**

Chair Keawe adjourned the meeting at 1:00 p.m.

Respectfully Submitted by:

  
\_\_\_\_\_

Lani Agoot

Commission Support Clerk

( ) Approved as circulated (add date of meeting approval)

( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.

**ADOURNMENT**